



United States Department of the Interior

OFFICE OF THE SOLICITOR

Office of the Field Solicitor
Bishop Henry Whipple Federal Building
1 Federal Drive, Room 686
Ft. Snelling, Minnesota 55111-4007

November 5, 1998

BIA.TC.9495

Dr. R. D. Courteau
10961 Cove Drive
Onamia, MN 56359

Dear Dr. Courteau:

In the interests of providing a more thorough response, the Office of the United States Attorney forwarded your letter of September 27, 1998 to this office¹ for reply to questions which you raised as to the effect of the Nelson Act (Jan. 14, 1889, 25 Stat. 642) on the status of several Chippewa Indian reservations in Minnesota.

Based on language in a recent decision of the Supreme Court of the United States which interprets the Nelson Act as resulting in complete extinguishment of Indian title, your letter, indicates that you are under the misapprehension that the Nelson Act, enacted in 1889, disestablished the Indian Reservations for five of the bands of Chippewa (Grand Portage, Fond du Lac, Mille Lacs, Bois Forte and Leech Lake Bands, hereinafter referred to as the five Chippewa bands) in Minnesota. Referring specifically to the Mille Lacs Indian Reservation, you question the use of road maps and signs which reflect the continued existence of those reservations. It appears that your mistaken impression in this regard arises out of confusion as to the distinction between Indian title and reservation boundaries. Using the Mille Lacs Reservation as an example, the historical background and judicial standards for determining whether an Indian reservation's boundaries have been diminished or disestablished (terminated) are outlined below.

While Congress has the authority to terminate or diminish a reservation unilaterally, Congressional intent to do so must be clearly expressed. Under the auspices of the Nelson Act, Congress created the framework for the cession of all Chippewa reservations in Minnesota, except portions of the White Earth and Red Lake Reservation². However, Section 3 of the Nelson Act expressly provided a right for any member of the five Chippewa bands (Grand Portage, Fond du Lac, Mille Lacs, Bois Forte and Leech Lake Bands) to remain on their home reservations and to take an allotment of land

¹ This office provides legal counsel to the Department of Interior, Bureau of Indian Affairs, Minneapolis Area Office.

² A commission was appointed to negotiate with the Chippewa for the removal of the Grand Portage, Fond du Lac, Mille Lacs, Bois Forte and Leech Lake Bands to the White Earth Reservation.

RECEIVED OF BUREAU OF INDIAN AFFAIRS
MINNEAPOLIS AREA OFFICE
93 NOV -9 AM 11:25

there rather than remove to White Earth.

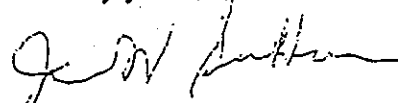
Historical information demonstrates that most members of the Mille Lacs Band, for example, opted to remain and seek allotments on the Mille Lacs Reservation as provided for in Section 3 of the Nelson Act. Accordingly, while some members of the five Chippewa bands which had been designated to remove to White Earth did relocate, the majority did not. Further, there is no clear evidence that Congress considered the reservation boundaries for the five Chippewa bands to have been either diminished or terminated. To the contrary, in both the Act of July 22, 1890, 26 Stat. 290, and the Act of May 27, 1902, 32 Stat. 268, Congress referred to the rights of Indians "within [the] Mille Lacs Reservation." The latter statute offered the Indians inducements-as well as exceptions-to removal from the Mille Lacs Reservation, and thus provides evidence that in 1902 Congress believed the Mille Lacs reservation continued to exist. Such inducements would have been unnecessary if the reservation had ceased to exist by virtue of the Nelson Act agreement (which had been approved years earlier).

In addition to these examples of evidence that Congress did not consider the boundaries of the reservations for the five Chippewa bands in Minnesota effectively disestablished by the Nelson Act, there are numerous judicial decisions which reflect the continued existence of those reservation boundaries, as opposed to the Indian title to lands which are within the reservation boundaries. In the recent case which you referenced, *Cass County v. Leech Lake Band*, 119 S.Ct. 1904 (1998) the decision of the Supreme Court clearly indicates that the Leech Lake Reservation continues to exist. The language which you quoted refers to the extinguishment of Indian title to lands within the Reservation. That decision explicitly acknowledged the continued existence of the Leech Lake Reservation. Other judicial decisions have recognized the continued existence of reservation boundaries for the five Chippewa bands which the Nelson Act had designated for removal to White Earth. For example, subsequent to the *Cass County v. Leech Lake Band* decision, a recent federal district court decision reaches conclusions which explain the Nelson Act and clearly recognize the continued existence of the Grand Portage Reservation (*See, Melby et al. v. Grand Portage Band of Chippewa et al.*, U.S.D.C. D. MN, unpublished, August 13, 1998).

Because, as explained herein, the boundaries for the Mille Lacs Indian Reservation established in the Treaty of 1855 remain intact, undiminished by the Nelson Act as interpreted by federal courts, the road maps and signs reflecting the existence of that reservation, and the reservations of the other Chippewa bands identified for removal in the Nelson Act, are not inaccurate.

We hope this illuminates the issues raised as concerns expressed in your letter.

Sincerely yours,



Jean W. Sutton

For the Field Solicitor

cc: Bob Small, AUSA

UBIA/MAO, Attn: Realty Officer

USGS, George Garklavs, Director (Mounds View, MN)